IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO. 765 OF 1991

1. Shri Sakharam Balu Bhosale,
2. Shri Sitaram Narayan Bhosale,
3. Shri Gangaram Sakharam Bhosale.

All Agriculturists, Residing at and
Post Karambali, Tal. Pen,
Dist. Raigad. ..Petitioners

Vs.

1. Vithal Manya Katkari,
At and Post Karambeli,
Tal. Pen, Dist. Raigad.

2. Yeshwant Raghunath Tilak,
Residing at Varsai, Tal. Pen,
District Raigad. .. Respondents

Mr.G.V.Limaye and Mr K.S.Dewal, for Petitioners.

CORAM: D.B. BHOSALE, J.
DATED: 19th January, 2005

Judgment reserved on : 21st December,2004.
Judgment pronounced on : 19th January, 2005.

JUDGMENT :

1. This petition under Article-227 of the Constitution of India is directed against the Judgment and Order dated 11.10.1990 rendered by the Maharashtra Revenue Tribunal, Bombay, (for short, "MRT") dismissing the revision application filed by the petitioners and affirming the order dated 20.4.1988 passed by the Assistant Collector, Panvel Division, Panvel in Tenancy Appeal No.8 of 1988. That appeal was filed against the

order dated 12.8.1961, passed by the Tenancy Awal Karkoon in the proceedings filed by respondent no.2 under section 14 read with section 25(2) of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short, "the Act").

2. The factual matrix that would be relevant and material for considering the questions involved in the writ petition, in brief, is as follows.

. Respondent No.1 claims that he was a tenant in the land bearing Survey No.12, Hissa Nos. 1,3,4,5,6 and 8, admeasuring 1-Acre and 7-Gunthas. (for short "the suit land"). Respondent No.2 was the original landlord, while the petitioners are purchasers of the suit land. It is not clear as to whether the proceedings under section 32G of the Act were ever initiated in respect of the suit land. The case set up by respondent no.2-landlord was that he was minor on 1.4.1957 and, therefore, tillers' day was postponed as contemplated under section 32F (1) (a) of the Act. Respondent no.1, therefore, continued in possession of the suit land as a tenant after 1.4.1957 and since he had committed default in payment of rent, respondent no.2 had filed an application bearing Tenancy Application No.138 of 1961 under section 14 read with section 25(2) of the

Act. Those proceedings were concluded in 1961 in which the respondent -tenant was called upon to pay the arrears of rent making it clear to him that if he failed to pay the arrears his tenancy would stand terminated and possession of the suit land would be restored to the landlord. The order to that effect was passed on 29.7.1961. Since that order was not complied with, the order of possession was passed by the Tenancy Awal Karkoon on 12.8.1961 and in pursuance thereof the possession of the suit land was delivered to respondent no.2-landlord on 9.12.1961. As stated earlier, on 5.3.1963 the land was transferred by respondent no.2 to the petitioners.

3. It appears that the proceedings under section 3 of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 were initiated in respect of the suit land and the petitioners were directed to restore the possession thereof to the respondent-tenant. That order was carried in appeal by the petitioners bearing Appeal/Revision No.12/1987 before the MRT in which the order of restoration of possession came to be stayed and that appeal is still pending before the MRT. Respondent no.1, thereafter, seems to have filed an Appeal No.8 of 1989 against the order dated 12.8.1961 before the Assistant Collector, Panvel Division,

Panvel, who vide his order dated 20.4.1988, allowed the appeal holding that the respondent-landlord was not entitled to seek remedy under section 14 read with section 25(2) of the Act. That order was carried in Revision before the MRT which dismissed the revision vide order dated 11.10.1990 holding that the landlord was not entitled to take benefit of the provisions contained in Section 32F(1)(a) of the Act.

4. I heard Mr Dewal, learned counsel for the petitioners, for quite some time and with his assistance perused the impugned judgments and other material placed before me. Mr Dewal vehemently submitted that the MRT committed manifest error of law by overlooking the fact that the partition of the joint family of which the respondent-landlord was a member, was effected prior to 1.4.1957 and in any case before 31.3.1958 and in view thereof the authorities below ought not to have interfered with the order passed by the Tenancy Awal Karkoon dated 12.8.1961 holding that Mamlatdar did not record his satisfaction in respect of the partition as contemplated in proviso to sub-section (1)(a) of section 32F of the Act. He further submitted that such contention was not raised by the tenant before the Tenancy Awal Karkoon when the order was passed on 12.8.1961. According to Mr Dewal, since 32G

proceedings was never initiated in the instant case, it was not open for the tenant to challenge the order dated 12.8.1961 on the ground that there was no partition as contemplated in the proviso to sub-section (1)(a) of section 32F of the Act. In other words, according to Mr Dewal, it was not open for the tenancy authorities to enter into an issue as to whether there was a partition by metes and bounds and that all the properties of the joint family as contemplated in the proviso to sub-section (1)(a) of section 32F in the proceedings under section 14 read with 25(2) of the Act. He further submitted that the authorities below committed manifest error in entertaining the appeal after 27 years on the ground that the Mamlatdar did not record his satisfaction in respect of the partition without there being an application seeking condonation of delay by the respondent-tenant. According to Mr Dewal, after 27 years the order cannot be said to be nullity or without jurisdiction. In support of his submission the reliance was placed on the following judgments: (i) Laxman N Divekar Vs. State of Maharashtra, 1998 (I) Mh.L.J. 745, (ii) Pandharinath Rambhau Kavitke Vs. Shaikh Hamaja Shaikh Husen, 2001 (4) Mh.L.J.43, (iii) Gulabbhai Bapubhai Gawandi Vs Smt Sonubai Bapurao Katkar (Spl C.A.No.1021 of 1975 decided on 11.1.1982) reported in 1982 TLR 44, (iv) Digambar

B.Kulkarni Vs.Krishna B Patil (Spl.C.A.2400 of 1974 decided on 13.10.1978), and (v) Rajnarainsingh Avadhraj Singh & ors Vs Smt Vidyadevi wd/o Ramraj Singh Kalu Singh & ors., 2003 (4) All MR 1071.

5. In order to appreciate the contentions urged by the learned counsel appearing for the petitioner and the questions involved in the writ petition better, it would be advantageous to reproduce the provisions contained in Section 32F(1)(a) and the proviso appended thereto as follows.

> "32F(1) Notwithstanding anything contained in the preceding sections,-
> (a) Where the landlord is a minor, or a widow, or a person subject to any mental or physical disability... the tenant shall have the right to purchase such land under section 32, within one year from the expiry of the period during which such landlord is entitled to terminate the tenancy under section 3 and for enabling the tenant to exercise the right of purchase, the landlord shall send an intimation to the tenant of the fact that he has attained majority, before the expiry of the period during which such landlord is entitled to

terminate the tenancy under section 31;

(Provided that where a person of such category is a member of a joint family, the provisions of this sub-section shall not apply if at least one member of the joint family is outside the categories mentioned in this sub-section unless before the 31st day of March,1958, the share of such person in the joint family has been separated by metes and bounds and the Mamlatdar on inquiry is satisfied that the share of such person in the land is separated, having regard to the area, assessment, classification and value of the land, in the same proportion as the share of that person in the entire joint family property and not in a larger proportion.)"

6. Proviso appended to clause (a) indicates that where a person of such category is a member of a joint family, the provisions of this sub section shall not apply if atleast one member of the joint family is outside the categories mentioned in this sub section unless before the 31st day of March, 1958, the share of such person in the joint family has been separated by metes and bounds. The proviso further provides that the Mamlatdar, on enquiry, is expected to record his

satisfaction that the share of such person in the land is separated by metes and bounds having regard to the area, assessment, classification and valuation of the land, in the same proportion as the share of that person in the entire joint family property and not in a larger proportion. In other words, where the landlord is a minor, as is in this case, the tenant's right to purchase such land under section 32 stands postponed till his disability disappears and one year lapses thereafter. But this embargo on the exercise of right of purchase by the tenant does not operate if the property belongs to a joint family and there is a partition therein and the land in question is allotted to the person under disability. What the section insists upon is that (i) share of such person in the joint family has been separated by metes and bounds and (ii) Mamlatdar is satisfied that the share of such person in the land is separated in the same proportion as the share of that person in the entire joint family property and not in a larger proportion. It is only when these two conditions stand fulfilled, the tiller's day under section 32F(1)(a) stands postponed.

7. In the present case, according to the respondent-landlord there was a partition on 16.3.1957 and in that partition some lands including the suit

land were allotted to his share. The Assistant Collector, as well as the MRT considered this aspect carefully and in proper perspective and have recorded that the partition had not been effected of all the properties of the joint family and it was not by metes and bounds as required under the proviso of sub-section 1(a) of section 32F of the Act. There is no dispute that respondent no.1-tenant was in possession of the suit land on 1.4.1957 as a tenant. Though the authorities below did not make a reference to the judgment of the Apex Court in **Balkrishna Somnath Vs. Sada Devram Koli and Anr, AIR 1977 Supreme Court 894**, they have observed in terms of the said judgment and allowed the application filed by respondent no.1-tenant by condoning the delay of 27 years for the reasons stated in the impugned order. While condoning the delay, the authorities below have noticed that respondent no.1 is Adiwasi and is absolutely illiterate. It is not clear either from the orders of the authorities below or from the record that whether the proceedings under section 32G were ever initiated and dropped in view of the fact that the landlord was a minor.

8. The record shows that since 2.4.1948 Manya Vithal Tatkari, i..e father of respondent no.1 was

protected tenant in the suit land and he was cultivating it until he was dispossessed in pursuance of the order passed in the proceedings under sections 14 and 25(2) of the Act. Moreover, this factual position has not been disputed at all. It appears that some lands including the suit land was transferred to respondent no.2, who was minor on 1.4.1957 vide mutation entry no.300. The said mutation entry shows that the partition was effected on 16.3.1957, by which out of several properties belonging to the joint family consisting of respondent no.2, only few properties were allotted to him in the so-called partition declaring that respondent no.2 would not have share in any other properties of the joint family. One Parshuram R.Tilak had singed the memorandum of partition i.e. Bedave Patra on behalf of the respondent-tenant who was then minor. Against this backdrop, probably the proceedings under section 32G were not initiated and respondent no.1 continued in possession as tenant in the suit land after 1.4.1957 until he was dispossessed in pursuance of the order passed in the proceedings under section 14 read with section 25(2) of the Act.

9. The Apex Court was dealing with somewhat similar situation in the case of Balkrishna Somnath (supra) wherein it has observed that :

> "8. We are dealing with an agrarian reform law whose avowed object is to confer full proprietorship on tilling tenants and it is a fact of common knowledge that landlords resort to cute agrarian legal engineering to circumvent the provisions. The legislature, with local knowledge of familiar manipulations and manoeuvres calculated to defeat land reforms, makes widely-worded provisions the 'why' of it may not be easily discernible tot he Court. We have to give full force and effect without whittling down or supplying words. Nor can the Court presume the mischief and remedy the evil by interpretative truncation.... "

The Apex Court has further observed that partial partition may be legally permissible and the Hindu Law does not require investigation into the motives or motivelessness behind the partition and that accepted division in status is good enough to commensality or jointness under the personal law. However, what has been observed further is relevant for our purpose. The Apex Court further proceeds to record that "But we are now in the jurisdiction of land reform legislation and

the Legislature, with a view to fulfil its objectives, may prescribe special requirements. The Court has to give effect to them, in the spirit of agrarian reform and not read down the wide words on judicial suppositions." In paragraph 12 of the judgment, the Apex Court has observed that the proviso to subsection (1)(a) of section 32F can rescue the widow or the minor only if the prerequisites are fairly and fully fulfilled. Section 32 states that the tenants shall be deemed to have purchased the tenanted land on the tillers' day. The Tribunal suo mottu takes action to determine the purchase price. But all this is kept in abeyance if the landlord belongs to the disabled category and qualifies under Section 32F(1)". The Apex Court was, in that case, considering the submission made on behalf of the landlord that it is none of the concern of the agrarian law what happens to the other assets of the joint family so long as the lands are divided in fair proportion. While dealing with the submission, the Apex Court in paragraph 13 observed thus:

> "13. The Proviso clearly states that the disabled person's share 'in the joint family' must have been 'separated by metes and bounds'. Separation from the joint family

means separation from all the joint family assets. Otherwise the sharer remains partly joint and, to that extent, is not separate from the joint family. Notional division or division in status also may not be enough because the Act insists on separation 'by metes and bounds.' Ordinarily 'metes and bounds' are appropriate to real property, meaning, as the phrase does, 'the boundary lines of land, with their terminal points and angles'. In the context, the thrust of the expression is that the division must be more than notional but actual, concrete, clearly demarcated. The ineptness and involved structure and some ambiguity notwithstanding, the sense of the sentence is clear.

. The share of a person in the joint family, plainly understood, means his share in all the joint family properties and not merely in the real estate part. What is more, the section uses the expressions 'the share of such person in the joint family', 'the share of such person in the land', 'the share of such person in the entire joint family property'. Thus it is reasonable to hold that when the expression used is 'the share of such person in the joint

> family', it is not confined to the share in the land only. It really means his share 'in the entire joint family property'. Moreover, the statutory exercise expected of the Mamlatdar by the Proviso involves an enquiry into the share of the disabled person in the land, and its value, the share of that person in the entire joint family property, the proportion that the allotment of the land bears to his share in the entire joint family property with a view to see that there is no unfair manoeuvre to defeat the scheme of the Act. The necessary postulate is that there is a division in the entire joint family property. Therefore, the imperative condition for the operation of the Proviso is that there should be a total separation and so far as a disabled member is concerned it must cover all the joint family properties."

10. It is thus clear that the share of a person in the joint family property, plainly understood, means his share in all the joint family property and not merely in the real estate part. In other words, it really means his share in the entire joint family property. Moreover, the statutory exercise expected of

the Mamlatdar by the proviso involves an enquiry into the share of the disabled person in the land and its value, the share of that person in the entire joint family property, the proportion that the allotment of the land bears to his share in the entire joint family property with a view to see that there is no unfair manoeuvre to defeat the scheme of the Act. The necessary postulate is that there is a division in the entire joint family property. In other words, there should be a total separation and so far as a disabled member is concerned and it must cover all the joint family properties.

11. In the present case, both the authorities below have concurrently held that there was no partition by metes and bounds and that there was no total separation in so far as respondent no.2 landlord is concerned. In other words, respondent no.2 landlord was not allotted a share in all the joint family properties. It is also evident from the memorandum of partition that there was no partition of all the joint family properties amongst all the members of the joint family by metes and bounds. What had been done by the so-called memorandum of partition dated 16.3.1957 is that only few properties had been allotted to the share of respondent no.2 consisting of the suit land. He was

not given share in other properties nor the properties of the joint family were partitioned amongst the other members of the family. It is crystal clear from the contents of the so-called partition deed that it was executed only to defeat the rights of the tenant in the property of the joint family including the suit property, which was in possession of respondent-tenant. The manner in which the order under section 14 of the Act was passed, it is absolutely clear that the tenancy Awal Karkoon failed in his statutory obligations of recording his satisfaction in respect of the partition as contemplated under section 32F of the Act before entertaining the proceedings under section 14 read with section 25 (2) of the Act. If a person in possession of an agricultural land is a tenant and was in occupation of such land on 1.4.1957 of which the landlord belongs to the categories as contemplated in subsection (1)(a) of Section 32F,, under any circumstances the proceedings under section 14 read with section 25(2) of the Act against such tenant cannot be initiated unless there is an order as provided under the proviso appended to section 32F (1)(a) of the Act postponing the tillers' day and/or dropping of 32G proceedings after recording satisfaction in respect of partition as required under that provisions. If that is not done, the tenant

becomes a deemed purchaser on tiller's day and in that case the landlord cannot claim rent from such tenant or terminate the tenancy for default of the tenant in paying the rent to the landlord. The tenancy authorities, therefore, while dealing with the proceedings under section 14 read with section 25(2) in which the landlord belongs to the categories mentioned in sub-section (1)(a) of section 32F of the Act need to record satisfaction that the share of such person had been separated by metes and bounds having regard to the area, assessment, classification and value of the land, in same proportion as the share of that person in the entire joint family property and not in a larger proportion. In my opinion, in the instant case, the Tenancy Awal Karkoon while dealing with the application under section 14 read with section 25(2) of the Act, had not only failed to protect the interest of the tenant but also failed in his obligations to conduct an enquiry as contemplated under section 32F of the Act. He ought not to have entertained the application of the landlord under section 14 read with section 25(2) of the Act who claimed that he was minor without holding an enquiry as contemplated in the proviso appended to clause (a) of sub-section (1) of section 32F. The object of the Act, inter alia, being improving the economic and social conditions of peasants, ensuring

the full and efficient use of land for agriculture, providing considerable measure of security of tenure to all classes of tenants, and fixing a maximum level of rent payable and also enabling the tenant to purchase within limit licenced land from the landlord, the same would be defeated and/or frustrated if the order, like the one in the present case, is not set aside and allowed to be operated against the tenant. Therefore, in my considered opinion, the order of the Tenancy Awal Karkoon dated 12.8.1961 has rightly been set aside. The Tenancy Awal Karkoon ought to have borne in mind that he was dealing with an agrarian reform law whose avowed object is to confer full proprietorship on tilling tenants and it is a fact of common knowledge that landlords resort to cute agrarian legal engineering to circumvent the provisions as held by the Apex Court in Balkrishna Somnath’s case. Against this backdrop, I do not deem it appropriate to exercise the supervisory jurisdiction under Article 227 of the Constitution of India.

12. It is true that the respondent-tenant challenged the order dated 12.8.1961 under section 14 read with section 25(2) of the Act after long delay. It appears that the proceedings under section 3 of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 was initiated in respect of the suit land and

the petitioners were directed to restore the possession thereof to the respondent-tenant. The order passed in the said proceedings was carried in appeal/revision by the petitioners bearing Appeal No.12 of 1987 before the MRT and those proceedings are still pending. The initiation and pendency of those proceedings probably did not prompt the respondent-tenant to challenge the order passed in the proceedings under sections 14 and 25(2) of the Act. However, pending hearing and final disposal of the appeal bearing No.12 of 1987 the respondent-tenant seems to have filed the Appeal bearing no.8 of 1989 against the order dated 12.8.1961 before the Assistant Collector, Panvel Division, Panvel, who, vide his order dated 20.4.1988, allowed the appeal holding that the respondent-tenant was not entitled to seek remedy under section 14 read with section 25(2) of the Act. Against this backdrop, both the authorities below condoned the delay and entertained the challenge against the order dated 12.8.1961 concurrently holding that the order under section 14 read with section 25(2) of the Act was without jurisdiction and was illegal. The question, therefore, arises is that as to whether or not in the given facts and circumstances of the case the extremely limited jurisdiction under Article 227 of the Constitution of India deserves to be exercised to

disturb the findings of facts recorded by the authorities below. It is clear from the observations made by the authorities below that the question of delay was thoughtfully considered and they condoned the delay for the reasons recorded in their orders. It is true that there was no application filed by the respondent-tenant for condonation of delay, however, such objection had not been raised by the petitioners before the authorities below. The oral submissions made by the parties on the question of delay were however entertained and dealt with in proper perspective. Keeping that in view, I do not deem it proper to interfere with and reverse the concurrent findings recorded by the authorities below on merits as well as on the question of delay. It is now well settled that exercise of jurisdiction under Article 227 of the Constitution is limited and restrictive in nature. It is so exercised in the normal circumstances for want of jurisdiction, error of law, perverse findings and gross violation of natural justice. It is merely a revisional jurisdiction and does not confer an unlimited authority or prerogative to correct all errors or even wrong decisions made within the limits of the jurisdiction of the courts below. The finding of fact being within the domain of the inferior tribunal, except where it is a perverse recording

thereof or not based on any material whatsoever resulting in manifest injustice, interference under the the Article is not called for. This is settled in Essen Dainki Vs. Rajiv Kumar, 2002 (8) SCC 400. The Apex court in Mani Nariman Daruwala Vs Phiroz N Bhatena, (1999) 2 SCC 143 in a similar vein in paragraph 12 thereof observed that "in the exercise of this jurisdiction the High Court can set aside or ignore the findings of fact of an inferior court or tribunal, if there was no evidence to justify such a conclusion and if no reasonable person could possibly have come to the conclusion which the court or tribunal who has come or in other words it is a finding which was perverse in law. Except to the limited extent indicated above the High Court has no jurisdiction to interfere with the findings of fact". Keeping this in view and in the facts and circumstances of the instant case, it cannot be said that the view taken by the authorities below was patently bad and suffering from clear errors of law. In any case the findings recorded on merits as well as on the question of delay cannot be termed as perverse in law. I find absolutely no reason to interfere with the findings recorded by the authorities below in the extremely limited jurisdiction of this Court under Article 227 of the Constitution of India. The authorities relied upon, on the question of

delay, are of no avail to the petitioners for the reasons recorded in the foregoing paragraphs. I have no hesitation in affirming the concurrent findings recorded by the authorities below

13. In the circumstances, the writ petition fails and is dismissed as such. Rule is discharged. No order as to costs.

(D.B. BHOSALE, J.)

dwp765-91

HIGH COURT
CIVILI APPELLATE SIDE

WRIT PETITION NO.765 OF 1991

Date of Judgment:

19th January, 2005

For approval and signature

THE HON'BLE MR.JUSTICE D.B.BHOSALE.

1. Whether Reporters of Local Papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur Aurangabad or Goa offices?